

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

TONY E. KANNO,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-11-32-D
)	
THREE UNKNOWN AGENTS OF THE)	
FEDERAL MARSHALS OF OKLAHOMA)	
CITY OFFICE, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

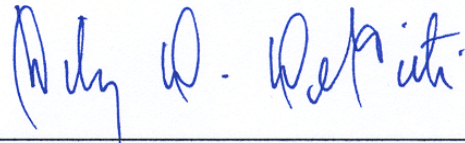
This matter comes before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Valerie K. Couch on April 4, 2011, recommending the dismissal of this action due to Plaintiff's failure to pay the initial partial filing fee of \$37.37, as required by 28 U.S.C. § 1915(b)(1) and prior orders directing payment. Judge Couch also recommends the denial of Plaintiff's request for appointment of counsel.

Shortly after the Report was issued, Plaintiff made a payment of \$50.00 to the Clerk of Court. Also, Plaintiff filed a notice of a change of address, reflecting his release from confinement in the David L. Moss Criminal Justice Center. As a likely result of this change, a copy of the Report that had been mailed to Plaintiff was returned as undeliverable. Accordingly, although Plaintiff did not file a timely objection to the Report, the Court finds that the lack of objection should be excused. Under these circumstances, the Court declines to dismiss this action but concurs in Judge Couch's recommendation that the appointment of counsel should be denied at this time.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 14] is adopted in part and declined in part. The case is again referred to Judge Couch for further

proceedings consistent with the initial case referral. However, Plaintiff's Motion for Appointment of Counsel Pursuant to 18 U.S.C. § 3006A [Doc. No. 13] is DENIED.

IT IS SO ORDERED this 27th day of April, 2011.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE